

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



# 74-2545

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
Docket No. 74-2545

FLOZELL JONES, Administrator of the  
Estate of Dennis Jones, Decedent,

Plaintiff/Appellant

vs.

KEITH MARSHALL, Officer, West Hartford,  
Police Department

Defendant/Appellee

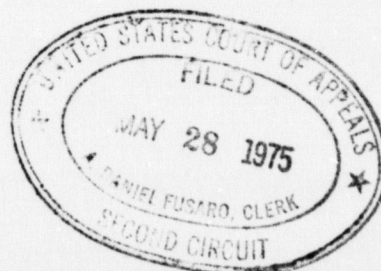
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR DEFENDANT/APPELLEE

Submitted by and to be  
argued by:

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### ISSUE ON APPEAL

The single issue on this appeal is whether the District Court erred when it rejected the claim of the plaintiff/appellant that the controlling law of Connecticut, applied by the District Court in this case, is unconstitutional.

The law of Connecticut which, under the facts stipulated, is here controlling provides that a police officer may use deadly force in attempting to effect the arrest of a fleeing felon if the officer actually believes that the escaping person has committed a felony and also had reasonable cause to believe that it was necessary, under the circumstances, to use deadly force to prevent the escape and make the arrest.

The plaintiff claimed specifically that the defendant deprived his decedent of his civil rights in violation of 42 U.S.C. Sec. 1983, and that if Connecticut law permitted the defendant police officer to use deadly force under the stipulated circumstances of this case, then that Connecticut law is unconstitutional.



### FACTS AS STIPULATED

The parties have formally stipulated as to all the relevant facts upon which this case has been decided by the District Court. The stipulation of facts and amendments thereto appear on pages 13 through 18 of the Joint Appendix. The stipulation includes, in addition to a narrative of the events out of which this case arose, also pertinent provisions of Connecticut statutory and common law (as in paragraphs 14 and 16 on page 15 of the Joint Appendix.)

An excellent summary of the stipulated facts is incorporated into the District Court's memorandum of decision, which summary appears on pages 4 and 5 of the Joint Appendix.

### ARGUMENT

The defendant/appellee submits that the District Court struck at the heart of the issue on this appeal when it declared on page 5 of its memorandum of decision (top page 7 Joint Appendix) that "... this Court must allow Marshall to use the common law privilege enunciated by Martyn v. Donlin as a shield against liability unless that common law privilege itself be unconstitutional." (Citations omitted)

Judge Blumenfeld then distinguishes the cases cited by the plaintiff/appellant in his trial brief and notes that Connecticut has reaffirmed its policy and law as to the specific matter being challenged by retaining and codifying the Martyn rule in its new penal code though in most other respects adopting provisions of the Model Penal Code advocated by plaintiff/appellant. The specific "Martyn rule" statute (Sec.53a-22 Conn. Gen. Stat.) appears in the footnote on pages 9 and 10 of the Joint Appendix. The challenged law of Connecticut as expressed in the so-called Martyn rule and in the state's new penal code as cited above has been found by the District Court not to "shock the conscience" or otherwise offend any constitutional principle.

Defendant/appellee contends that plaintiff's brief in this Court, like his trial brief submitted to the District Court, might better be addressed to the General Assembly of Connecticut than to this Court. As Judge Blumenfeld stated "If the plaintiff believes the state law on the use of deadly force to effect an arrest to be unjust or overly harsh, it is to the legislature, and not the federal courts, that he must turn."



### CONCLUSION

It has seemed inappropriate to include in argument in this brief some of the broad general principles that were advanced in the District Court. That this may be a case where the rights of an individual must be measured against the rights of society and where an individual, in the act of violation of the law, seeks its protection, may not be necessary considerations in the determination of this appeal.

The District Court has so clearly defined and decided the central issue herein that the appellee can only urge that this Court affirm the judgment as rendered.

Respectfully submitted,

ROBERT Y. PELGRIFT  
Attorney for Defendant/Appellee





This is to certify to the delivery in  
hand of two copies of the within  
brief to all counsel of record -  
28 May 1975 *Robert T. Griffin*  
*Attorney at Law*